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Witness [redacted]

Witness [redacted] (Homicide)

Witness [redacted]

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# LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
## BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
## JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

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June 29, 2018

Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755




Re: Officer Involved Shooting of Robert Hess
J.S.I.D. File #16-0634
L.A.S.D. DR #016-16042-1475-013

Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 15, 2016, fatal shooting of Robert Hess by members of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Juan Segura-Cisneros, #[redacted]
Deputy Ernest Magana, #[redacted]
Deputy Joseph Mendoza, #[redacted]
Deputy Brian Gemmill, #[redacted]
Deputy [redacted], #[redacted]
Deputy Sean Cariaga, #[redacted]

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# MEMORANDUM

TO: CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Robert Hess
J.S.I.D. File #16-0634
L.A.S.D. File #016-16042-1475-013

DATE: June 29, 2018

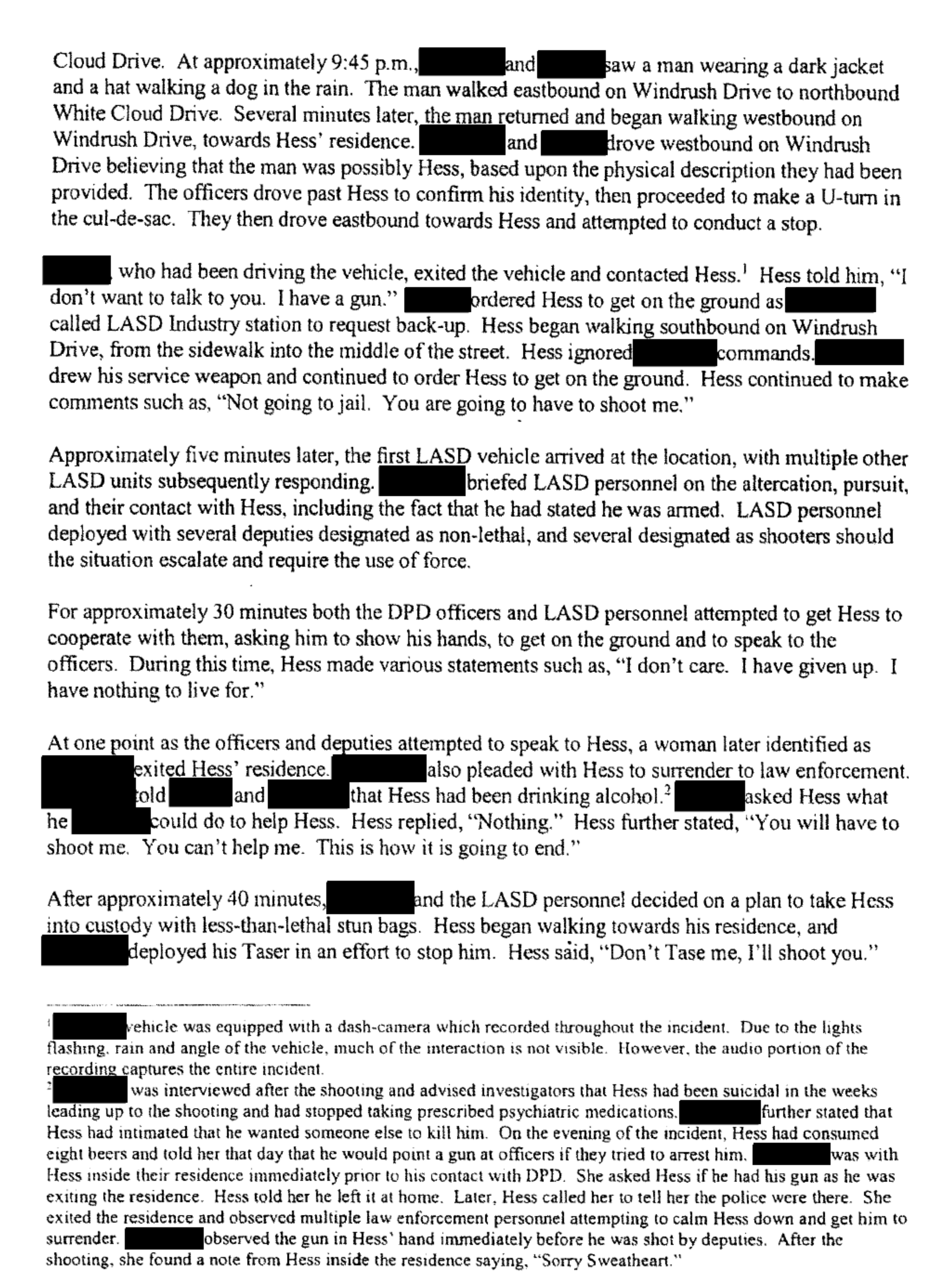
The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 15, 2016, fatal shooting of Robert Hess by Los Angeles County Sheriff's Department (LASD) Deputies Juan Segura-Cisneros, Ernest Magana, Joseph Mendoza, Brian Gemmill, Sean Cariaga and [redacted] We have concluded that the above deputies acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 12:01 a.m., on December 16, 2016. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings of interviews, firearm analysis reports, the autopsy report, crime scene diagrams and sketches, photographic and video evidence, and witness statements submitted to this office by LASD Detectives Lugo and Ramirez. The voluntary statements of all involved deputies were considered as part of this analysis.

## FACTUAL ANALYSIS

On December 15, 2016, at approximately 5:00 p.m., two Downey Police Department (DPD) Officers [redacted] and [redacted] were conducting stationary surveillance on a suspect named Robert Hess near his residence in Hacienda Heights. Hess had been involved in an altercation with family members earlier that day, where he assaulted several individuals with both a knife and a gun. DPD responded to the location, but lost Hess during a high speed pursuit of Hess on a motorcycle. Having been briefed on the altercation and the pursuit and shown a DMV photograph of Hess, [redacted] and [redacted] were dispatched to Hess' residence at [redacted] Windrush Drive, in the City of Hacienda Heights. Initially the officers saw no sign of Hess. They parked their un-marked Downey Police vehicle approximately six houses to the east of Hess' residence on White



Cloud Drive. At approximately 9:45 p.m., [redacted] and [redacted] saw a man wearing a dark jacket and a hat walking a dog in the rain. The man walked eastbound on Windrush Drive to northbound White Cloud Drive. Several minutes later, the man returned and began walking westbound on Windrush Drive, towards Hess' residence. [redacted] and [redacted] drove westbound on Windrush Drive believing that the man was possibly Hess, based upon the physical description they had been provided. The officers drove past Hess to confirm his identity, then proceeded to make a U-turn in the cul-de-sac. They then drove eastbound towards Hess and attempted to conduct a stop.

[redacted] who had been driving the vehicle, exited the vehicle and contacted Hess.[1] Hess told him, "I don't want to talk to you. I have a gun." [redacted] ordered Hess to get on the ground as [redacted] called LASD Industry station to request back-up. Hess began walking southbound on Windrush Drive, from the sidewalk into the middle of the street. Hess ignored [redacted] commands. [redacted] drew his service weapon and continued to order Hess to get on the ground. Hess continued to make comments such as, "Not going to jail. You are going to have to shoot me."

Approximately five minutes later, the first LASD vehicle arrived at the location, with multiple other LASD units subsequently responding. [redacted] briefed LASD personnel on the altercation, pursuit, and their contact with Hess, including the fact that he had stated he was armed. LASD personnel deployed with several deputies designated as non-lethal, and several designated as shooters should the situation escalate and require the use of force.

For approximately 30 minutes both the DPD officers and LASD personnel attempted to get Hess to cooperate with them, asking him to show his hands, to get on the ground and to speak to the officers. During this time, Hess made various statements such as, "I don't care. I have given up. I have nothing to live for."

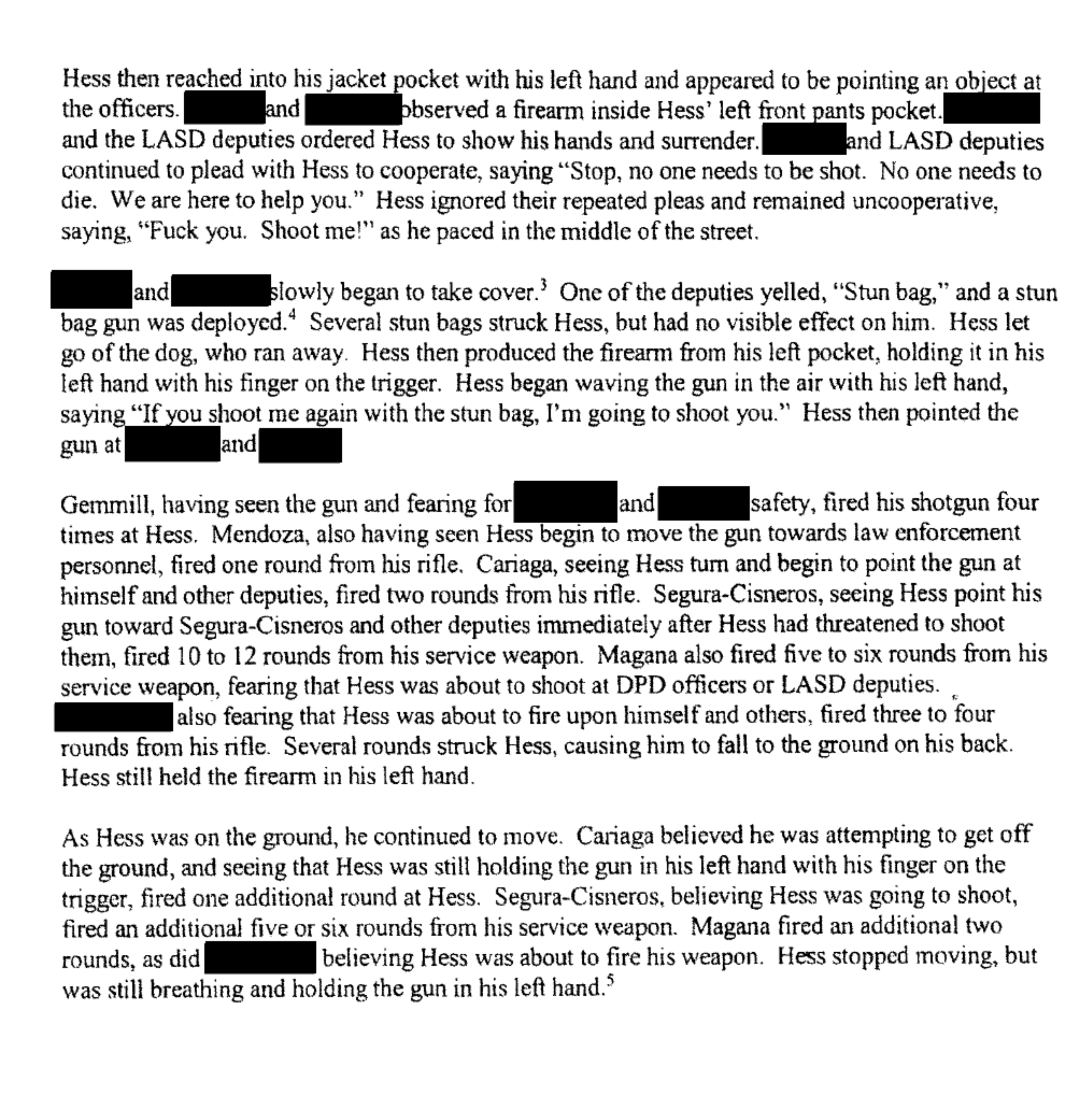
At one point as the officers and deputies attempted to speak to Hess, a woman later identified as [redacted] exited Hess' residence. [redacted] also pleaded with Hess to surrender to law enforcement. [redacted] told [redacted] and [redacted] that Hess had been drinking alcohol.[2] [redacted] asked Hess what he [redacted] could do to help Hess. Hess replied, "Nothing." Hess further stated, "You will have to shoot me. You can't help me. This is how it is going to end."

After approximately 40 minutes, [redacted] and the LASD personnel decided on a plan to take Hess into custody with less-than-lethal stun bags. Hess began walking towards his residence, and [redacted] deployed his Taser in an effort to stop him. Hess said, "Don't Tase me, I'll shoot you."

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[1] [redacted] vehicle was equipped with a dash-camera which recorded throughout the incident. Due to the lights flashing, rain and angle of the vehicle, much of the interaction is not visible. However, the audio portion of the recording captures the entire incident.

[2] [redacted] was interviewed after the shooting and advised investigators that Hess had been suicidal in the weeks leading up to the shooting and had stopped taking prescribed psychiatric medications. [redacted] further stated that Hess had intimated that he wanted someone else to kill him. On the evening of the incident, Hess had consumed eight beers and told her that day that he would point a gun at officers if they tried to arrest him. [redacted] was with Hess inside their residence immediately prior to his contact with DPD. She asked Hess if he had his gun as he was exiting the residence. Hess told her he left it at home. Later, Hess called her to tell her the police were there. She exited the residence and observed multiple law enforcement personnel attempting to calm Hess down and get him to surrender. [redacted] observed the gun in Hess' hand immediately before he was shot by deputies. After the shooting, she found a note from Hess inside the residence saying, "Sorry Sweatheart."



Hess then reached into his jacket pocket with his left hand and appeared to be pointing an object at the officers. [redacted] and [redacted] observed a firearm inside Hess' left front pants pocket. [redacted] and the LASD deputies ordered Hess to show his hands and surrender. [redacted] and LASD deputies continued to plead with Hess to cooperate, saying "Stop, no one needs to be shot. No one needs to die. We are here to help you." Hess ignored their repeated pleas and remained uncooperative, saying, "Fuck you. Shoot me!" as he paced in the middle of the street.

[redacted] and [redacted] slowly began to take cover.[3] One of the deputies yelled, "Stun bag," and a stun bag gun was deployed.[4] Several stun bags struck Hess, but had no visible effect on him. Hess let go of the dog, who ran away. Hess then produced the firearm from his left pocket, holding it in his left hand with his finger on the trigger. Hess began waving the gun in the air with his left hand, saying "If you shoot me again with the stun bag, I'm going to shoot you." Hess then pointed the gun at [redacted] and [redacted]

Gemmill, having seen the gun and fearing for [redacted] and [redacted] safety, fired his shotgun four times at Hess. Mendoza, also having seen Hess begin to move the gun towards law enforcement personnel, fired one round from his rifle. Cariaga, seeing Hess turn and begin to point the gun at himself and other deputies, fired two rounds from his rifle. Segura-Cisneros, seeing Hess point his gun toward Segura-Cisneros and other deputies immediately after Hess had threatened to shoot them, fired 10 to 12 rounds from his service weapon. Magana also fired five to six rounds from his service weapon, fearing that Hess was about to shoot at DPD officers or LASD deputies. [redacted] also fearing that Hess was about to fire upon himself and others, fired three to four rounds from his rifle. Several rounds struck Hess, causing him to fall to the ground on his back. Hess still held the firearm in his left hand.

As Hess was on the ground, he continued to move. Cariaga believed he was attempting to get off the ground, and seeing that Hess was still holding the gun in his left hand with his finger on the trigger, fired one additional round at Hess. Segura-Cisneros, believing Hess was going to shoot, fired an additional five or six rounds from his service weapon. Magana fired an additional two rounds, as did [redacted] believing Hess was about to fire his weapon. Hess stopped moving, but was still breathing and holding the gun in his left hand.[5]

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[3] Both [redacted] and [redacted] were wearing body cameras which recorded their interactions with Hess. However, when they took cover, Hess ceased to be visible on the video, although the audio recordings still captured the interactions.

[4] Deputy [redacted] initially fired two to three stun bag rounds at Hess. When they proved to have no effect after striking Hess, Deputy Ernest Magana fired an additional four stun bag rounds. Three of the stun bags struck Hess, but did not stop him.

[5] One civilian witness observed Hess on the ground after the initial volley of shots. He indicated that Hess was pulling the trigger of the firearm as he was lying on the ground. Prior to that, the witness believed Hess was firing shots into the air before deputies began firing at him.



A team was assembled to approach and disarm Hess. A firearm was recovered from his left hand and a knife was recovered from his front pant pocket.

Paramedics responded to the scene and pronounced Hess dead at 11:35 p.m. An autopsy was conducted and the cause of death was deemed to be multiple gunshot wounds. A toxicology screen done as part of the autopsy revealed that Hess had marijuana and Hydrocodone in his system at the time of his death.

## LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to

be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

The evidence examined in this investigation shows that each of the involved deputies fired their service weapons in response to an imminent deadly threat. A thorough review of both the witness statements and the audio/video recordings of the contact between law enforcement and Hess reveals that law enforcement personnel repeatedly tried to avoid any use of force against Hess, even when such force would have been reasonable. For a period of over thirty minutes, various officers and deputies pleaded with Hess to show his hands and surrender. Repeated reassurances from officers and deputies that they did not want anyone to get hurt were answered by Hess telling officers the only way he would comply was if they shot him. Hess made repeated verbal threats to harm deputies, including threatening to shoot them. Even after Hess told officers he was armed, when his firearm was visible in his pocket and when he drew the weapon, only non-lethal force was used against him. Deputies only fired at Hess when he began to point the weapon at DPD and LASD personnel, with his finger on the trigger, thereby posing an imminent threat of great bodily injury or death to the officers and deputies and requiring them to make a split-second judgment. Deputies exhausted all other means of gaining control of Hess and had no other viable option but to use deadly force.

**CONCLUSION**

We find that Deputies Segura-Cisneros, Magana, Mendoza, Gemmill, Cariaga and [redacted] acted lawfully in self-defense and in defense of others when they used deadly force against Robert Hess. We are closing our file and will take no further action in this matter.